UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

TGC, LLC D/B/A GOLF CHANNEL

Employer

and **Case 10-RD-154113**

JOHN B. GALLAGHER

Petitioner

and

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, AFL-CIO, CLC

Union

DECISION AND DIRECTION OF ELECTION

TGC, LLC d/b/a Golf Channel (Employer) is a limited liability company engaged in the operation of a cable television network provided golf related programming including, among other matters, coverage of golf tournaments, both nationally and internationally, in either live or recorded format. Its corporate address is in Florida.

The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC (Union) represents the Employer's employees identified in the following bargaining unit:[1]

[1] Although it does not specifically so state in the unit description it appears, based on payroll records submitted, that the employees in the unit are those who are employed for events in North America.

> All technicians employed by TGC, LLC d/b/a Golf Channel to perform work in connection with recorded or live golf tournament play, including e.g. "spotlight," at remote locations including camera operators (for stationary, hand held and/or remotely operated camera), videotape operators, digital recording device operators, audio technicians, graphic operators, technical directors, audio assistants, video technicians, video technician assistants, utility technicians, and others in similar technical positions performing pre-production, production and post-production work in connection with the telecasting of live or recorded golf tournaments at remote locations, but excluding all other employees, including employees employed on news studio shows (e.g. "Live From," "Road Show," and "Feherty"), managers, clericals, guards and supervisors as defined in the Act.

The Union was certified as the exclusive collective-bargaining agent for this unit on May 16, 2013, in Case 31-RC-097352. On June 12, 2015, John B. Gallagher (Petitioner) submitted a petition seeking an election to determine if the unit employees continued to desire to be represented by the Union for purposes of collective bargaining. For the reasons set below, the petition was docketed by the Region on June 15, 2015. Near midnight on June 12, 2015, (Pacific Time) a ratification vote for a collective-bargaining agreement was completed by unit employees and the Employer was notified by the Union the contract had been ratified.

A hearing was held before a hearing officer of the National Labor Relations Board (the Board), during which the parties were given the opportunity to present evidence on the issues raised by the petition, to examine and cross-examine witnesses, and present argument and case law in support of their positions.

Positions of the Parties

As evidenced at the hearing and set forth orally or by brief, there are three issues in this matter: (1) whether the petition was properly "filed' on June 12, 2015, and if not, whether the petition should be dismissed; (2) whether the collective-bargaining agreement between the Union

and the Employer serves as bar to the processing of the petition; and (3) if an election is directed, what is the appropriate eligibility formula for determining who can vote in the election?

The Union argues that the new election rules specifically require a petitioner to serve three documents to parties named in the petition before a charge can be filed and docketed. The Union asserts the petition in this matter was never properly filed because the Petitioner failed to provide the Employer and Union with a clean copy of the Statement of Position form and failed to provide any copy of the statement of procedures form as required. Accordingly, it contends the petition should never have been docketed by the Region and the Region should dismiss it on procedural grounds. The Union further asserts that inasmuch as the petition was not properly filed on either June 12, or as of June 15 when it was docketed, the collective-bargaining agreement ratified on June 12, 2015, serves as a bar to any further processing of the petition.

Both the Employer and the Petitioner assert the Petitioner timely and properly served a copy of the actual petition on the Region, the Union and the Employer on June 12, prior to completion of the ratification vote, and therefore it was properly filed. While acknowledging the other documents should have been provided, they contend the Petitioner acted in good faith and that any failing on his part was due to inexperience and confusion with the rules. Accordingly, they contend the petition should not be dismissed on technical grounds where the Union cannot show it was prejudiced or harmed by its failure to receive all three documents. Both also contend that because the petition was received by the Region and the parties before the contract was ratified, the petition was properly filed and therefore the contract the parties subsequently signed cannot act as a bar to the processing of the petition.

All three parties agree that if an election is directed in this case, it should be by mail-ballot. Both the Employer and the Petitioner request a six week balloting period while the Union requests a four week balloting period.

Both the Employer and Union agree that in light of the on-call nature of the work force, a special eligibility formula is necessary to determine those employees eligible to vote. However, they disagree as to what the formula should be. The Union asserts that if an election is directed the appropriate eligibility formula would consist of all unit employees who have worked and/or have been offered and committed to work on at least one remote Golf Channel tournament or one remote Golf Channel production in conjunction with a remote tournament for the period from January 1, 2014, to November 30, 2015. The Employer, on the other hand, asserts that the proper eligibility formula would include all unit employees who have worked two tournaments within the past twelve months ending on June 12, 2015. The Petitioner took no position as to what the proper eligibility formula should be, and deferred to the Employer's position on the matter.

The Regional Director's Findings

After carefully considering the evidence and arguments made by the parties at the hearing, I find, for reasons discussed more fully below, that the petition should not be dismissed based on the failure of the Petitioner to properly serve the parties with a blank "Statement of Position" form and a "Description of Representation Case Procedures in Certification and Decertification Cases (Form NLRB 4812)." Furthermore, I conclude that the collective-bargaining agreement between the Union and the Employer was not ratified or signed prior to the filing of the petition on June 12, 2015, and accordingly, that agreement cannot serve as a bar to further processing of the petition. Finally, I conclude that the proper eligibility formula to be

applied in this case should be all employees who have worked two remote tournaments during the period from January 1, 2014, through the payroll period ending June 12, 2015.

Accordingly, I will direct an election be conducted for the reasons set forth below.

A. Was the Petition Properly Filed on June 12?

1. Factual Findings

The Petitioner testified that he sent NLRB Form 502 – RD Petition via overnight mail on June 11, 2015 and it was delivered to the Atlanta, GA Regional office before 10:00 AM on June 12, 2015. A showing of interest was submitted with the petition. At approximately 11:42 AM (Eastern Time), the Petitioner received an email from an NLRB agent informing the Petitioner that his petition had been received but that he needed to submit a certificate of service showing service of all the proper documents to the other parties named in the petition. The email advised the Petitioner to view the instructions and proper forms on the NLRB's website and stated that the Petitioner was required to serve a copy of its petition on the parties along with "this form and the Statement of Position form."[2] Subsequently, the Petitioner spoke with the NLRB agent and explained that he was sending copies of the petition to the Employer and the Union after he was done with work around 1:00 PM ET.

At approximately 11:37 AM (Pacific Time), Sandra England, Director of the Broadcast department for the Union, received an email from Staples Copy Center with the Petitioner's RD Petition attached. Petitioner also physically handed a copy of the petition to Cathy Crowther, Senior Director of Remote Operations for the Employer. He then faxed a completed NLRB Form 5544 – Certificate of Service to the Region at about 2:52 PM (ET), certifying that "a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505),

[2] Although a link to the instructions was included, the email did not specifically mention the description of procedures as one of the required forms.

and a Description of Procedures (Form NLRB-4812)" were served on Cathy Crowther for the Employer and on Sandra England for the "other party named in the petition."

At approximately 3:18 PM (ET), an NLRB agent emailed Petitioner to let him know the Certificate of Service had been received by the Region, but added that Petitioner still needed to submit the Statement of Position form. Petitioner testified that after receiving this email, he called the NLRB board agent and asked for help. He asserted the Board Agent told him to fill out the Statement of Position Form and send it to the Employer and the Union. Thereafter, he filled out the parts of the NLRB Form 505 Statement of Position that he thought were applicable. At about 12:55 PM (PT), Director England received an email from Staples Copy Center with the Petitioner's partially filled out Statement of Position Form 505 attached.

Petitioner admitted at the hearing that he never sent a copy of NLRB Form 4812 – Description of Procedures to either the Union or the Employer.

Due to the late receipt of the certificate of service on June 12, the Regional office was unable to docket the petition until Monday, June 15, 2015. However, the June 12, 2015, receipt date was listed as the filing date of the petition. The Regional office mailed and emailed a copy of the Petition, Notice of Petition for Election (Form 5492), Notice of Representation Hearing, Description of Procedures (Form 4812), and a Statement of Position form and Commerce Questionnaire (Form 505) to the Union, Employer, and the Petitioner on June 15, 2015. At the time of docketing, the Region was unaware that contrary to the certificate of service provided by the Petitioner that Description of Procedures (Form 4812) had not been provided and that clean copies of the Statement of Position form had not been provided to the other parties.

2. Analysis and Conclusions

The National Labor Relations Board issued new rules for the processing of representation cases, effective April 14, 2015. These rules changed a number of requirements for the filing and processing of representation petitions. Section 102.60(a) sets forth the new requirements that accompany the filing of a petition with the Regional Director for a Region. "A certificate of service on all parties named in the petition shall also be filed with the Regional director when the petition is filed. Along with the petition, the petitioner shall serve the Agency's description of procedures in representation cases and the Agency's Statement of Position form on all parties named in the petition." Section 102.61(c) specifies the required contents of a petition for decertification, which includes the requirement that the showing of interest be included with the petition. As the General Counsel's Memorandum GC 15-06, issued on April 6, 2015 makes clear, a petition will not be docketed by the NLRB unless it is accompanied by both the showing of interest and the required certificate of service. Memorandum GC 15-06 also states that a petitioner must serve on all parties named in the petition a copy of the petition, a Form 4812 Description of Representation Case Procedures, and Form 505 Statement of Position, "to ensure the earliest possible notice of the filing of a petition and the Statement of Position requirement." The Board's own comments on the new rule also stress that the new "service" requirement for the petitioner is primarily for the purpose of affording the parties the earliest possible notice of the petition. *See* Federal Register, Vol. 79, No. 240, Sections II and V, pgs 74309 and 74327.

The Union asserts the petition should never have been docketed by the Region as neither the "Description of Representation Case Procedures" form nor a blank "Statement of Position" form was served on either the Union or the Employer. However, at the time of docketing by the Region, the Region was in receipt of the documents it was required to have. Indeed, it delayed

docketing until it had those documents - which is why docketing could not be completed until June 15, 2015.[3] Accordingly, I find the petition was properly docketed.

The Union next asserts the petition should be dismissed because the Petitioner did not, contrary to the certificate of service, serve all of the required documents on the parties. While conceding it subsequently received all the required documents from the Region and had no evidence that it was prejudiced, it argues a rule is a rule and therefore the petition must be dismissed. I disagree.

Initially, I note that part of the failure to provide the documents could be attributable to the incomplete and confusing instructions the Petitioner received from the Board agent following initial receipt of the petition as to what documents were required and thereafter as to what was required regarding the Statement of Procedure form.[4] Given the newness of the rules, the confusing instructions and his inexperience in filing petitions, it is quite understandable as to the Petitioner's failures. Accordingly, I find he made a good faith effort to comply with the rules.

Although it is important that petitioners attempt to comply with the rules, including submitting accurate certificates of service, the Board's comments on the rule changes make clear the purpose of requiring the petitioner to serve documents on the named parties is to give the earliest possible notice that a petition has been filed. "Any issue raised with respect to whether the petition was properly served will continue to be handled consistent with the Board's existing practices in this area. Moreover, the petitioner's simultaneous service of the petition is simply

[3] To the extent the Union implies that a Region should verify the accuracy of the certificate of service prior to docketing the petition, there is no such requirements under the rules. A requirement to do so would obviate the necessity of the certificate of service, could cause a delay in docketing, and put unnecessary strain on Regional resources.

[4] Although Petitioner had discussions with counsel prior to the filing of the petition, there is no evidence he was assisted by counsel in the filing of the petition.

intended to provide all interested parties with the earliest possible notice of the filing of the petition …" Federal Register, Vol. 79, No. 240, Section V, pg 74327.

I note further the Board has routinely found that adherence to form over substance can run contrary to the purposes and polices of the Act. As the Board succinctly stated in Alfred Nickles Bakery, 209 NLRB 1058, 1059 (1974):

> In order to maintain the orderly processing of these cases, there must be adherence to the Board's Rules and Regulations. We do not say that there will be a "slavish" adherence to **form** rather than **substance**. What we do say, however, is that in order to support a variance or deviation from the clear requirements of the Board's Rules, there must be some showing that there has been an honest attempt to substantially comply with the requirements of the Rules, or, alternatively, a valid and compelling reason why compliance was not possible within the time required by the Rules.

In light of the above, inasmuch as it is undisputed that the Petitioner timely served the petition to all parties on June 12, 2015, I find it would be elevating form over substance to dismiss this petition merely due to the Petitioner's mistake in failing to serve a "blank" Statement of Position form and a Notice of Procedures form to both the Union and the Employer. Accordingly, I find the petition was properly filed at least as of approximately 3:18 pm, when the certificate of service was received, on June 12, 2015.[5]

[5] Under the prior representation case rules, the date a petition was filed was determined by its receipt rather than the date of its docketing. Carnation Co., 121 NLRB 178, 179, FN 2 (1958), citing to American Radiator & Standard Sanitary Corporation, 67 NLRB 1135, 1137 (1946). At this point I am uncertain as to whether the Board might determine to make the receipt of the certificate as a prerequisite for considering when a petition is "filed" for contract bar or critical period or other periods where the date of filing may have a strong impact on proceedings or whether simple receipt and notice of the petition is sufficient.

B. Contract Bar

The Union asserts there is a contract bar to this petition because a contract between the Union and the Employer was ratified by employees on June 12 prior to the petition being properly filed. It further asserts that inasmuch as the petition has never been properly filed and docketed, the collective-bargaining agreement signed by the parties acts as a bar to further processing of the petition.

1. Factual Findings

On May 16, 2013, the Union was certified as the collective-bargaining representative for certain employees employed by the Employer following an NLRB election (*see* Case 31-RC-097352). The Union and the Employer began negotiations for a collective-bargaining agreement in about September 2013. Ratification of the agreement by employees was agreed to as a condition precedent before an agreement was complete.[6] On May 28, 2015, the Employer, through its primary negotiator Andrew Herzig, sent Union Negotiator Sandra England an email with the Employer's revised and final version of the collective-bargaining agreement to be

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[6] The first paragraph of the collective-bargaining agreement states, "This Agreement is made and entered into as of _____, 2015 **[the date of ratification of this Agreement (the "Ratification Date")]** …" Ms. England testified at the hearing regarding the negotiations over including this language in the contract. She explained the Employer had initially proposed the contract be effective the first payroll period after ratification. After some negotiations back and forth, the Union proposed that the contract be made and entered into as of the date of ratification by the unit employees. The Employer agreed to this language and changed the language in the contract to reflect this agreed upon proposal. Ms. England further testified that there was never any discussion over whether the parties would have to sign the contract before it would be effective. Per Ms. England's recollection, the only negotiations over the effective date of this collective-bargaining agreement was the exchange of proposals concerning the ratification date.

submitted to the unit for ratification. This email specifically states that it contained the Employer's "revised offer."[7]

The Union utilized a third-party election service to handle the ballots for the ratification vote. Unit employees received an email with a "ballot" and a link to the contract. They could click the link and review the collective-bargaining agreement before deciding whether to cast their ballot for or against ratification. The polls opened on June 3, 2015, and remained open until 11:59 PM (PT) June 12, 2015, (or 2:59 AM (ET) June 13, 2015).

On June 12, 2015, Ms. England was in Spokane, Washington, which is in the Pacific time zone. She monitored the ratification election through the third-party election website. Approximately ten minutes before midnight (PT), she signed the collective-bargaining agreement on behalf of the Union upon seeing that no new votes had been submitted in two and a half hours. At 11:57 pm June 12 (PT) (2:57 am June 13 ET), Ms. England sent an email to Mr. Herzig, Mike McCarley, and Christopher Murvin (upper management for the Employer) informing these gentlemen that the bargaining unit membership had ratified the collective-bargaining agreement and attaching the version of the contract that she had signed and dated for June 12, 2015. The ratification vote officially ended on June 12, at 11:59 PM (PT) (2:59 AM ET). The final tally was 107 yes votes in favor of ratifying the contract with 71 no votes.[8]

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[7] Unit employees had refused to ratify an earlier agreement reached about February 15, 2015. Thereafter, the Union and the Employer continued to negotiate for an agreement which led to the May 28 agreement.

[8] At the time of the vote, no employee was a member of the Union as the Union was awaiting contract ratification before asking employees to join. Two hundred and thirty-two employees were sent invitations to participate in the voting. This number was based on the number of employees who had "participated with the Union" rather than all possible unit employees as approximately 10 had asked not to participate. The list of potential voters had been supplied to the Union by the Employer at an earlier date pursuant to an information request. The Union contends it went beyond those unions which permit ratification by members only. No evidence was put on as to any running total of the votes on a daily basis. Nineteen ballots were cast on

The next day, June 13, 2015, Ms. England spoke with Mr. Herzig over the telephone. In this conversation, they spoke of the decertification petition and whether Mr. Herzig knew which Region it had been filed in. Ms. England also told Mr. Herzig that as far as the Union was concerned, they believed they had a valid agreement regarding the collective-bargaining agreement. In this conversation, Ms. England recalled that Mr. Herzig acknowledged receiving the signed contract from her.

On June 19, 2015, Ms. England sent Mr. Herzig an email asking for information regarding the Employer's "hire" list and the list of people who had "committed" to work for the Employer during the second half of 2015. The Employer is required to provide this information to the Union under the collective-bargaining agreement.

On June 22, 2015, Mr. Herzig sent an email to Ms. England with a signed version of the collective-bargaining agreement dated June 18, 2015. The email also states that the employer "conformed the ratification date throughout to be June 13, 2015, which is the date that Golf Channel received notice from the union that the agreement had been ratified and was effective." The email also clarifies that the agreement's expiration date is June 12, 2017. The version of the collective-bargaining agreement attached to this email had a few modifications to it from that signed by Ms. England. In this regard, where Ms. England had written in "6-12" for the "ratification date" on the first page of the contract, the Employer had scratched through that and had written in "June 13." Additionally, on the signature page of the contract (page 21), the Employer had filled in June 13, 2015, as the ratification date and wrote in 6/12/2017, as the expiration date. On pages 22, 23, and 24 of the contract, there are three "side letters" with the

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June 11 the day the petition was mailed by the Petitioner to the Region and twenty-eight were cast on June 12 the day the Region and all parties received the petition.

words "Ratification Date" at the top. On these pages, the Employer also wrote in "June 13, 2015" next to the words "Ratification Date."

2. Analysis and Conclusions

The burden of proving that a contract bars a petition is on the party asserting the doctrine. Road & Rail Services, 344 NLRB No. 43 (2005), citing Roosevelt Memorial Park, 187 NLRB 517 (1970).

The Union asserts that the petition should be dismissed based on improper service and filing. Second, the Union argues that because the contract has been ratified and signed by the parties, any attempts now to cure the defects and/or re-file the petition are untimely and would be barred by the collective-bargaining agreement that currently exists between the Employer and the Union.

For the reasons set forth in section A above, I find that the petition was properly filed at least as of 3:18 pm on June 12, 2015. Thus, the relevant questions to be resolved here are whether the contract was signed or ratified prior to the filing of the petition.

Contracts not signed before the filing of a petition generally cannot serve as a bar to the petition. Appalachian Shale Products Co., 121 NLRB 1160, 1162 (1958). "[T]he Board adopts the rules that a contract to constitute a bar must be signed by all the parties before a petition is filed and that unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions." An exchange of telegrams and/or an exchange of emails agreeing to a contract have been determined to meet the requisite signing requirements. *See e.g.*, American Medical Response, 01-RD-147474 (Apr. 15, 2015); Centers For New Horizons, Inc., 13-RD-143907 (Jan. 30, 2015). Georgia Purchasing, Inc., 230 NLRB 1174 (1977).

However, where, as here, a contract has been agreed upon subject only to ratification, the operative date for a contract bar is the date upon which ratification is finalized – not the date upon which the Union notifies the Employer of the ratification or the date the parties subsequently sign a final written copy of the agreement.

In Deluxe Metal Furniture Co., 121 NLRB 995 (1958), the Board reviewed the effect of the execution of a contract on the same day that a petition was filed. "Such a contract will bar an election if it is effective immediately or retroactively and the employer has not been informed at the time of execution that a petition has been filed." Id. at 999.

In this matter, irrespective as to whether the Union notified the Employer that the contract was ratified late on June 12 or early on June 13, it is clear both the Union and the Employer had been notified of the filing of the petition almost 11 hours prior to the closing of the polls at 11:59 pm (PT).[9] Inasmuch as the ratification process had not been completed prior to the filing of the petition and inasmuch as the Union and Employer were aware of the filing well before the end of the ratification process, the contract in this matter cannot serve as a bar to the processing of the petition.

C. Eligibility Formula

1. Factual Findings

The record reveals the unit employees primarily work at golf tournaments in the United States. Tournaments can occur simultaneously in locations scattered across the country. In 2014, according to records provided by the Employer approximately 70 tournaments were the subject of crew requests. In 2015, the pace of tournaments appears comparable with 24 crew

[9] I deem it sufficient that the Petitioner sent a copy of the petition to the Union and Employer for them to have knowledge of its filing. The fact that the Petitioner was continuing to work with the Region to do what he needed to perfect docketing does not negate notice of the filing.

requests as of June 26, 2015. All parties are in agreement that unit employees work strictly on an on-call basis, that the Employer maintains a list of individuals qualified for the work and that twice a year the Employer notifies the employees of events taking place over approximately the next six months for the purpose of obtaining commitments that employees will work particular events.

In the representation proceeding in 31-RC-097352 which lead to the Union's certification as bargaining representative, the parties stipulated to an eligibility formula of unit employees who had worked and/or had been offered work and had committed to work at least one remote Golf Channel tournament in the period from June 14, 2013, to June 30, 2013. The parties estimated the unit consisted of 200 to 214 employees at the time. Testimony at the hearing revealed this formula was agreed upon because of the Employer's assertion at that time that it had only recently begun to hire employees directly.

The terms of the contract sent to employees for ratification on June 3 do not discuss eligibility issues for voting purposes. However, certain provisions of the agreement begin to apply to employees upon their working two events, with additional benefits for employees who have worked 14 or more.

Although both the Employer and Union agree that a two tournament worked threshold should determine eligibility to vote in this matter, they disagree as to what the period should be for those two events. The Union asserts that if an election is directed the appropriate eligibility formula should consist of all unit employees who have worked and/or have been offered and committed to work on at least one remote Golf Channel tournament or one remote Golf Channel production in conjunction with a remote tournament in the period from January 1, 2014, to November 30, 2015. In this regard, the Union asserts that employees who have committed to

work through November 30 have an interest in continued employment with the Employer. The Employer, on the other hand, asserts that the proper eligibility formula would include all unit employees who have worked two tournaments within the past twelve months ending on June 12, 2015. It contends that although an employee has stated he or she will work, it does not mean he or she will, in fact, do so and that the more appropriate measure of interest is the actual experience shown. The Petitioner took no position as to what the proper eligibility formula should be, and deferred to the Employer's position on the matter.

2. Analysis and Conclusions

I am in agreement with the parties that an eligibility formula is necessary in this case due to the on-call and sporadic nature of the work performed by the unit employees. In many respects, the circumstances of intermittent employment in this case are similar to those in *Medion, Inc.,* 200 NLRB 1013 (1972), wherein the Board fashioned a formula of at least two productions for a minimum of 5 working days during the year preceding the issuance of the Decision and Direction of Election. However, all parties in this matter contend that only a two tournament requirement be met and none urge a minimum days worked requirement, no doubt because each tournament assignment lasts several days.

The question remains as to the time frame to be considered to optimize the number of eligible employees who may be permitted to vote. The Union urges what is tantamount to a two year period, including employees who have committed to work in tournaments through November 2015. The Employer urges a one year period from the date of the filing of the petition.

Unfortunately, in this proceeding, the Employer did not timely provide a required list of employees prior to the hearing. Thereafter, it produced payroll records only pursuant to a

subpoena issued by the Union and did so only after the hearing was continued to a later date to allow for the preparation of documents as the Union had not served its subpoena five days prior to the initial hearing date. The Employer did not provide any testimony at the hearing to explain the records it provided. Union witness testimony reveals that in obtaining records from the Employer in the past, the Union discovered a considerable number of employees it knew to have worked two tournaments, and indeed some who had worked a double digit number of tournaments, were missing from the lists provided. Consequently, the number of employees who have done so remain somewhat of a mystery with the Employer and Petitioner contending there are approximately 223 to 239 unit employees whereas the Union providing unrebutted evidence that the documents provided by the Employer show at least 257 employees meet the two tournament test for the year 2014 and counting the period from January 1, 2014, through May 2015, the number is 320 (as set forth in Union Exhibits 18 and 19).

However, there may be more as Union exhibit 17, a disc provided by the Union which it represents as an electronic version of hundreds of unit payroll records provided by the Employer, for the period 2013 through June of 2015, reveals the unit may, in fact, be much larger. In this regard, the disc contains the names of over 600 individuals. Spot checking the names on the disc with the names on Union exhibits 18 and 19 reveal substantial consistency. At the same time, however, if one looks at the employees on Exhibit 17 who worked 2 or more pay periods (presumably for remote tournament work) for the period from 1/1/2014 through the filing of the petition there are 530 unit employees and if one only counts the one year period prior to the filing of the petition there are 494. Although the payroll information is supposed to be limited to employees who performed crew work during the relevant time periods, the discrepancy in numbers is unexplained. Moreover, despite the representation that the list represents crew work,

it isn't clear if all such work meets the definition of remote tournament work which employees must perform to be eligible. In other words, it is not clear if the list includes some local hires who are not working at remote locations and therefore are not considered part of the unit.

Resolving the discrepancy at this time would require many hours or days of continued analysis and a resumption of the hearing. Doing such would defeat the purpose of more timely elections and use more time and resources than would the conduct of an election. Accordingly, I believe it best to defer the eligibility issues.

In the absence of rebutted evidence I must accept the Union's computations of the Employer's records as the best evidence available at this time and accordingly find that based on the period from January 1, 2014, through May 2015, as set forth in Union Exhibit 19, the unit consists of approximately of 320 employees who have worked two or more remote tournaments during that time period.

Accordingly, I will direct an election by mail ballot for those unit employees who have worked two or more remote tournaments for that time period.[10] Any dispute as to the eligibility of the employees on Union Exhibit 19, or for any employee not on that list whom any of the parties believe to be eligible can best be resolved through the use challenged ballots, if necessary.[11]

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[10] Given the relatively large size of the unit, I find that including only individuals who have a proven work history is more appropriate than including employees who may have committed, but who may, in fact, not work in the future as proposed by the Union. Although the Board in Medion only used a one year period, given the uncertainty of the records in this matter, a one and a half year period would optimize the number of eligible voters.

[11] I encourage the parties to work together prior to ballots being mailed out to review the list of eligible voters, and work with each other and the Region to resolve eligibility issues prior to the election rather than post election. Although the Union and Petitioner waived the 10 day requirement for the voter list, I will set the mailing of the ballots at a sufficient time for the parties to resolve some of these eligibility issues prior to the commencement of the election. If

Further Conclusions and Findings

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's ruling made at hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.

3. The Union claims to represent certain employees of the Employer.

4. The Union is a labor organization within the meaning of Section 2(5) of the Act.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

> All technicians employed by TGC, LLC d/b/a Golf Channel to perform work in connection with recorded or live golf tournament plan, including e.g. "spotlight," at remote locations including camera operators (for stationary, hand held and/or remotely operated camera), videotape operators, digital recording device operators, audio technicians, graphic operators, technical directors, audio assistants, video technicians, video technician assistants, utility technicians, and others in similar technical positions performing pre-production, production and post-production work in

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any of the parties believe an employee has been omitted from the list, the name and address of the employee should be provided to the Region and a ballot will be mailed to the employee.

connection with the telecasting of live or recorded golf tournaments at remote locations, but excluding all other employees, including employees employed on news studio shows (e.g. "Live From," "Road Show," and "Feherty"), managers, clericals, guards and supervisors as defined in the Act.

Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC.

A. Election Details

In accordance with the desires of the parties and given the on-call and scattered nature of the unit employees, I have determined that a mail ballot election will be held.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 2:00 pm on Wednesday July 15, 2015, ballots will be mailed to voters from the National Labor Relations Board, Region 10, Harris Tower Suite 1000, 233 Peachtree St NE, Atlanta, Georgia 30303. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Wednesday July 29, 2015, should communicate immediately with the National Labor Relations Board by either calling the Region 10 Office at 404 331-9687, or in the event of unavailability 404 331-3681, or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Regional office on Wednesday August 12, 2015, (5 weeks) at 1 pm. In order to be valid and counted, the returned ballots must be received in Atlanta, GA at the Regional Office, prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those unit employees who have worked two remote tournaments during the period from January 1, 2014, through the period June 12, 2015.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses,

available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional director and the parties by July 8, 2015. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties name in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. **In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees.**[12] The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not

[12] I note the request for crew lists provided by the Employer contains the email addresses of employees.

file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Atlanta, Georgia this 6th day of July 2015.

Claude T Harrell Jr

CLAUDE T. HARRELL JR.
REGIONAL DIRECTOR
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